#### Signed into Law

Bill Number: **HB 08-1020** 

Short Title: Costs in Civil Actions

Sponsors: Rep. Madden

Status: Signed into Law

Sen. Veiga

The bill clarifies that, if a plaintiff rejects a defendant's settlement offer and subsequently recovers a final judgement that is less than the settlement offer, the plaintiff is entitled to recover actual costs that accrued prior to the time the defendant made the settlement offer.

### State Appropriations:

The bill clarifies the awarding of costs in cases where a judgement is entered which is less than a rejected settlement offer. It will not significantly affect the workload of any state agency, but it may affect the amount recovered or paid by the state in certain civil litigation. As such, the bill is assessed as having a conditional fiscal impact because any potential impact would be conditioned on the state being a party to a lawsuit governed by the provisions of the bill.

Bill Number: **HB 08-1148** 

Short Title: Adverse Possession

Sponsors: Reps. Witwer & Levy

Status: Signed into Law

Sen. Tupa

The bill, allows an individual to acquire title to real property by adverse possession only if:

- the individual presents evidence to satisfy all elements of a claim for adverse possession under Colorado law; and
- the individual claiming adverse possession or a predecessor in interest had a good faith belief that he or she was the actual owner of the property and that belief was reasonable under the circumstances.

The individual asserting a claim of title to real property by adverse possession must prove both of the preceding elements by clear and convincing evidence.

In a situation where a claim of title to real property by adverse possession prevails, the bill authorizes the court to determine whether to award the nonprevailing party an amount equal to the actual value of the property, as well as any property taxes or other assessments levied on the property that the nonprevailing party has paid for the 18 years prior to the commencement of the adverse possession action.

If an individual claims adverse possession over a property as a defense to a claim of trespass, forcible entry, forcible detainer, or a similar claim against the adverse possessor, but not in order to gain title over the real property, the burden of proof for the defendant claiming adverse possession is by a preponderance of the evidence.

## State Appropriations:

The bill adds additional elements to perfect a claim for adverse possession of real estate and provides a discretionary reparation provision for a party who loses the litigation and thus title to his or her property.

It takes 18 years to perfect a claim for adverse possession. That 18-year period begins to accrue once there is open and notorious possession/use of the real estate in question. Since the bill applies to "rights that accrue" after July 1, 2008, no case could be brought under the bill until July 1, 2026, at the earliest. Case law interpreting this subsection of law suggest that it cannot be retroactive in application. Claims that have begun to accrue prior to July 1, 2008, would be adjudicated under existing law. Since any court cases arising from the bill will not occur until 2026, at the earliest, and the number of cases filed annually is expected to be small, the bill is assessed as having no fiscal impact.

#### Signed into Law (cont.)

Bill Number: **HB 08-1153** 

Short Title: Probate Code Fiduciary Oversight

Sponsors: Rep. Roberts Sen. Morse Status: Signed into Law

The amends the Colorado Probate Code to clarify the authority of the courts in managing individuals assigned fiduciary responsibility in the estate, guardianship, conservatorship, or trust of a decedent.

## State Appropriations:

The bill may increase the workload of the Judicial Branch, although the increase cannot be quantified at this time. The courts have sufficient resources to handle the current volume of requests, but may require additional resources in the future if the number of requests increases significantly. Conversely, without additional resources, the courts may be forced to reject requests for assistance beyond an absorbable level. The fiscal note assumes that any resources that might be needed in the future will be addressed through the regular budget process.

Bill Number: **HB 08-1173** 

Short Title: Prudent Management Institutional Funds

Sponsors: Rep. McGihon

Status: Signed into Law

Sen. Shaffer

The bill was recommended by the Colorado Commission on Uniform State Laws to bring Colorado into conformance with changes proposed by the National Conference of Commissioners of Uniform State Laws. The bill repeals and reenacts current statute governing the management and investment of institutional funds, setting new uniform standards for trusts, nonprofit corporations, foundations, and other entities. It also imposes additional responsibilities on individuals who manage and invest charitable funds and establishes stricter guidelines on spending from endowment funds. The bill amends the process for modification of restrictions on institutional funds.

### State Appropriations:

The bill has no fiscal impact on state or local government agencies. It sets new standards for investing institutional funds, but should not affect the investment earnings of any public institution. Neither will it affect the workload of any state or local government agency, including the courts.

#### Signed into Law (cont.)

Bill Number: **HB 08-1174** 

Short Title: Uniform Interstate Depositions and Discovery

Sponsors: Rep. McGihon Sen. Gordon Status: Signed into Law

mmended by the Colorado Cor

The bill was recommended by the Colorado Commission on Uniform State Laws and repeals current law concerning interstate depositions and discovery. The bill adopts the uniform act recommended by the National Conference of Commissioners of Uniform State Laws. The uniform act sets standards for a party in one state to subpoena witnesses, discover documents, and inspect premises in another state.

### State Appropriations:

Although it expands interstate discovery power in Colorado, which could increase the number of subpoenas handled by the courts and served by local law enforcement officers, the increase is not expected to be significant for any particular court or any particular county. Therefore, the bill is assessed at having no fiscal impact.

Bill Number: **HB 08-1202** 

Short Title: Uniform Foreign Money Judgments Recognition

Sponsors: Rep. McGihon

Status: Signed into Law

Sen. Shaffer

The bill was recommended by the Colorado Commission on Uniform State Laws and repeals current law concerning the recognition by Colorado courts of judgments from other countries granting or denying the recovery of damages. The bill adopts the uniform act recommended by the National Conference of Commissioners of Uniform State Laws in 2005. Specifically, HB 08-1202:

- sets forth procedures for seeking recognition under the act and places on the party seeking recognition the burden of proof for determining whether the act applies;
- clarifies and expands the grounds for not recognizing a foreign-country money judgment and places on the party resisting recognition the burden of proof for denying recognition; and
- establishes a 15-year statute of limitations for recognition of foreign-country money judgments.

### State Appropriations:

The bill modifies Colorado's process for recognizing foreign-country judgements. It requires a court action to be filed to determine recognition, which may increase filings or require additional work on existing cases. However, the additional workload is not anticipated to require additional resources for the courts. Therefore, the bill is assessed at having no fiscal impact.

#### **Postponed Indefinitely**

Bill Number: **HB 08-1011** 

Short Title: Sex Abuse of Child Civil Actions

Sponsors: Rep. Green

None

Status:

Postponed Indefinitely in House Judiciary

The bill would have removed the statute of limitations for victims of sexual assault on a child to file civil actions against either the perpetrator of the sexual assault or a third

## State Appropriations:

a child to file civil actions against either the perpetrator of the sexual assault or a third party. The bill also specifically allowed victims to:

The filing of additional civil cases as a result of this bill was expected to be minimal and absorbable within the existing resources of the Judicial Branch. The bill was not expected to impact any other state government agency.

- file a civil action against an individual who is deceased or incapacitated;
- recover damages other than those for medical treatment and counseling when filing a civil action more than 15 years after turning 18 years old;
- file a civil claim by July 1, 2010 (a two-year window from the effective date
  of the bill), even if they were originally barred from filing such an action by
  the applicable statute of limitations.

Bill Number: **HB 08-1211** 

Short Title: Spousal Privilege in Civil Actions

Sponsors: Rep. Sonnenberg

Status:

Postponed Indefinitely in House Judiciary

None

Current law, commonly known as "spousal privilege," states that an individual may not testify for or against his or her past or present spouse regarding communication that occurred during the marriage without the consent of the past or present spouse. This bill amended the spousal privilege statute to prevent spouses from invoking the privilege during the course of a civil action regarding an act by one or both of the spouses that occurred prior to the marriage.

#### State Appropriations:

Given that spousal privilege is rarely raised in civil actions, the Judicial Branch did not anticipate additional work in existing civil cases, nor additional case filings as a result of HB 08-1211. The bill did not affect state or local revenue or expenditures and, as such, was assessed as having no fiscal impact.

#### Postponed Indefinitely (cont.)

Bill Number: SB 08-019

Short Title: Negligence in Motor Carrier Agreements

Sponsors: Sen. Tapia

Rep. McFadyen

Status: Postponed Indefinitely by the House

The reengrossed bill states that a provision in a motor carrier transportation agreement that holds a person or the person's surety or insurer responsible for the negligence of another party is void as against public policy and unenforceable. Further, the bill states that a motor carrier transportation agreement can hold a negligent party responsible for indemnifying other parties but only to the extent of the indemnifying party's negligence. The bill prevents a party to a motor carrier transportation agreement from transferring financial responsibility for its own negligence to another party.

### State Appropriations:

The bill prohibits motor carrier transportation agreements that require a party to indemnify a third-party for negligence or fault of the third-party. The bill will not increase the number of case filings because it is assumed that injured parties will continue to follow their previous practice of bringing suit against all parties that they believe are equally responsible for damage caused. The source of indemnity funds to pay damages awards will not affect the number or general nature of cases. The bill will have little or no impact on the Judicial Branch. Any increase in workload can be absorbed under currently allocated resources. Thus, the bill is assessed as having no fiscal impact.

Bill Number: SB 08-115

Sponsors: Sen. Brophy

Rep. Stephens

The bill would have waived sovereign immunity and created a new civil cause of action against a governmental entity that created a gun-free zone, by order, rule, or procedure.

Short Title: Civil Action Gun-free Zone

Status: Postponed Indefinitely in Senate State, Veterans, and Military

**Affairs** 

### State Appropriations:

Cases brought against state entities that have created gun free zones would be defended by the Attorney General, and any judgments imposed would be paid from the General Fund. Any impact was conditional upon an individual being injured by criminal behavior in a gun-free zone, and bringing a case against a state entity that created the zone.

#### Postponed Indefinitely (cont.)

Status:

Bill Number: SB 08-164

Short Title: Limitation of Liability

Sponsors: Sen. Groff

Rep. T. Carroll

The reengrossed bill changes the definition of non-economic damages with regard to medical malpractice actions to exclude physical impairment or disfigurement. The bill aligns the cap for non-economic damages in medical malpractice actions, occurring on or after February 1, 2009, with those of all other civil actions. The limit for non-economic damage awards was adjusted for inflation as of January 1, 2008 and set at \$468,010. The bill prohibits the court from exceeding the non-economic damages cap in medical malpractice cases. The bill specifies that the limitations on damages for actions against public employees or entities is not changed. The bill provides that medical malpractice insurance rates may not be held inadequate as a result of the passage of this bill unless an insurer can show just cause for doing so.

### State Appropriations:

This bill applies only to cases that are resolved by trial, which includes approximately 2 percent of medical malpractice cases filed in district court. The bill is expected to slightly increase the number of hearings on the issue of whether there is clear and convincing evidence to exceed the non-economic damage cap. The increase in workload is assumed to be minimal and can be absorbed within existing resources. Given that the bill will not increase state or local revenues or expenditures, it is assessed as having no fiscal impact.

Postponed Indefinitely in House Judiciary